

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-00-222 (1)
	§	C.A. No. C-04-30
LUIS MANUEL ALVARADO-RIVERA,	§	
	§	
Defendant/Movant.	§	

**MEMORANDUM OPINION AND ORDER DENYING  
CERTIFICATE OF APPEALABILITY AS UNNECESSARY**

By order dated July 17, 2005 and entered July 19, 2005, the Court denied Alvarado-Rivera's motion in which he asked that the Court amend its judgment in order to allow him to appeal orders issued by the Court at the same time as its denial of his § 2255 motion. (See D.E. 94, denying D.E. 93). He argued that, although he had appealed those orders to the Fifth Circuit, the Fifth Circuit never explicitly addressed them. (See generally D.E. 93).


The Court's order denied him the relief he sought, and noted that the Fifth Circuit had already issued an order denying similar relief.

On August 22, 2005, the Clerk received from Alvarado-Rivera a Notice of Appeal dated August 17, 2005, appealing from the Court's July 17, 2005 Order. (D.E. 101). The notice of appeal is timely. See Rule 11, RULES GOVERNING SECTION 2255 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS (Fed. R. App. P. 4(a) governs appeals in 2255

proceedings); Fed. R. app. P. 4(a)(notice of appeal must be filed within sixty days of entry of the order being appealed).

Alvarado's notice of appeal also requests a Certificate of Appealability ("COA"). No COA is required to appeal from the Court's July 17, 2005 Order because the appeal is not from the merits of his habeas petition. Dunn v. Cockrell, 302 F.3d 491 (5th Cir. 2002); see also Lave v. Dretke, \_\_\_ F.3d \_\_\_, 2005 WL 1581090 (5th Cir. July 7, 2005)(in habeas proceedings, a COA is not a prerequisite to review the denial of a motion to stay proceedings); Johnson v. Dretke, 95 Fed. Appx. 548 (5th Cir. April 21, 2004)(denying request for COA as unnecessary where appeal was timely filed only as to the court's denial of postjudgment motions). Accordingly, Alvarado's request for a COA is DENIED AS UNNECESSARY.

ORDERED this 24<sup>th</sup> day of August, 2005.

  
HAYDEN HEAD  
CHIEF JUDGE